

ISSUED: September 20, 2002

D.T.E. 02-13-B

Investigation by the Department of Telecommunications and Energy on its own motion, pursuant to G.L. c. 159, §§ 12, 32, and 39 and G.L. c. 166, §§ 11 and 12, regarding the failure by several individually named common carriers of telecommunications services to file their annual returns for the year 2000 by March 31, 2001 and to pay statutory forfeitures.

In the Matter of

Brighton Billiards	D.T.E. 02-13-32
Davio's Restaurant	D.T.E. 02-13-33
DCA Telecom	D.T.E. 02-13-34
Matchless Communications, Inc.	D.T.E. 02-13-35
Robert A. LaPointe d/b/a Telepoint Communication	D.T.E. 02-13-36
Rodney Nunes d/b/a RAN Payphones	D.T.E. 02-13-37
Shepel Management Co., Inc.	D.T.E. 02-13-38
Standard Taxi	D.T.E. 02-13-39
Strat-o-matic Vending, Inc.	D.T.E. 02-13-40
Teletech, Inc.	D.T.E. 02-13-41
Terrasi & Son, Inc.	D.T.E. 02-13-42
TLC Payphone Communications	D.T.E. 02-13-43

I. INTRODUCTION

The Department requires all common carriers that are engaged in the “transmission of intelligence within the commonwealth,” i.e. telecommunications services, to be registered by having an approved tariff on file with the Department as well as a current statement of business operations. Regulatory Treatment of Telecommunications Common Carriers Within the Commonwealth of Massachusetts, D.P.U. 93-98 (1994), at 12; see also G.L. c. 159, § 12. All common carriers of telecommunications services within the Commonwealth also must file with the Department annual returns for the year ended December 31, by March 31 of the following year, in a format prescribed by the Department. G.L. c. 159, §§ 12, 32; G.L. c. 166, § 11. Therefore, the deadline for filing annual returns for the year 2000 was March 31, 2001, absent any extensions that the Department may grant for good cause. G.L. c. 159, § 32; G.L. c. 166, § 11.

Any telephone company that neglects to file the required annual return forfeits to the Commonwealth five dollars per day for the first fifteen days that the neglect continues, ten dollars per day for the next fifteen days, and fifteen dollars per day for each day thereafter. G.L. c. 166, § 12. Further, if the Department determines that a telephone company “unreasonably refuses or neglects to make such return,” the company shall forfeit up to \$500 in addition. Id. If, in the judgment of the Department, a common carrier neglects to make returns as required by law, the Department is obligated to present the facts to the Attorney General for action. G.L. c. 159, § 39.

A significant number of telephone companies failed to file annual returns on a timely basis and pay statutory forfeitures to the Commonwealth for the year 2000. Therefore, on April 8, 2002, the Department opened separate investigations into the failure by each of these companies to file annual returns or to pay the statutory forfeiture. Although this Order pertains to several proceedings with nearly identical facts, the dockets are not consolidated; thus, the findings of fact and directives issued today are applicable to each company, individually.

II. PROCEDURAL HISTORY

The Department opened investigations into the following companies: Brighton Billiards, docketed as D.T.E. 02-13-32; Davio's Restaurant, docketed as D.T.E. 02-13-33; DCA Telecom, docketed as D.T.E. 02-13-34; Matchless Communications, Inc., docketed as D.T.E. 02-13-35; Robert A. LaPointe d/b/a Tele-Point Communication, docketed as D.T.E. 02-13-36; Rodney Nunes d/b/a RAN Payphones, docketed as D.T.E.02-13-37; Shepel Management Co., Inc., docketed as D.T.E. 02-13-38; Standard Taxi, docketed as D.T.E. 02-13-39; Strat-o-matic Vending, Inc., docketed as D.T.E. 02-13-40; Teletech, Inc., docketed as D.T.E. 02-13-41; Terrasi & Son, Inc., docketed as D.T.E. 02-13-42; and TLC Payphone Communications, docketed as D.T.E. 02-13-43. Pursuant to notice duly issued, the Department conducted public hearings and evidentiary hearings in each of these proceedings on April 26, 2002 and April 29, 2002. No party entered an appearance or filed comments. The evidentiary record in each proceeding contains four exhibits.¹ After the evidentiary hearings,

¹ Because the exhibits in each proceeding are essentially identical in nature, all references to exhibits in this Order will omit the docket number and simply refer to the corresponding exhibit number; i.e. Exhibit 1.

Davio's Restaurant filed its annual return for the year 2000 in D.T.E. 02-13-33, and Rodney Nunes d/b/a RAN Payphones filed its annual return for the year 2000 in D.T.E. 02-13-37.

III. ANALYSIS & FINDINGS

Each company addressed in this Order is registered with the Department as a payphone provider. The Department has the discretion to "prescribe the forms for annual returns to be made to it by the several kinds of common carriers" G.L. c. 159, § 32. The Department requires payphone providers to file an annual return that requests a statement of intrastate revenues, a much simpler form than that required of other types of telephone companies. The Department may for good cause fix a date later than March 31, 2001 for filing the required annual return. G.L. c. 159, § 32; G.L. c. 166, § 11. There is good cause for fixing a later deadline for these payphone providers to file, because the statutory forfeiture calculated from March 31, 2001 would far exceed the revenues that these companies are likely to have derived from their payphones.² Therefore, the Department extends the deadline for filing to September 30, 2002 for each company addressed in this Order.

The Department finds, however, that any failure by a payphone provider to file an annual return for the year 2000 beyond this new deadline would be unreasonable, and such a provider would not be in compliance with the Department's regulatory requirements.³ Each

² The daily accruing forfeiture would have amounted to \$8,345 as of today.

³ Upon filing its registration with the Department, each payphone provider declares by affidavit that it understands that "if the Registrant is found not to be in compliance with the Department's requirements, the Department may withdraw registration and remove public access line service from the Registrant's pay telephones." Filing annual returns is a requirement specifically outlined in the payphone provider application forms.

company must certainly be aware of its failure to file an annual return, after having received numerous letters from the Department's Telecommunications Division and after notice that these investigations were commenced (Exhs. 2 - 4). Thus, the statutory forfeitures provided in G.L. c. § 166, 12 will apply to any payphone company that fails to file its annual return for the year 2000 by September 30, 2002, i.e. \$5 per day for the first fifteen days that it fails to file, \$10 per day for the second fifteen days, and \$15 per day thereafter, and \$500 in addition to the daily forfeitures, because of such company's unreasonable neglect to file its annual return for the year 2000. G.L. c. § 166, § 12. The Department finds no good cause to allow any further extensions. Further, the Department may direct removal of public access line service from the payphones of any company that fails to file by this deadline.

Davio's Restaurant and Rodney Nunes d/b/a RAN Payphones have satisfied the Department's filing requirements by filing the required annual return. The investigations regarding those two companies shall be terminated without findings.

IV. ORDER

After notice, opportunity for comment, and due consideration, it is

ORDERED that the investigation relative to Davio's Restaurant, docketed as

D.T.E. 02-13-33 be terminated; and it is

FURTHER ORDERED that the investigation relative to Rodney Nunes d/b/a RAN Payphones, docketed as D.T.E. 02-13-37 be terminated; and it is

FURTHER ORDERED that the deadline for each individual company addressed in this Order to file its annual return for the year 2000 be extended to September 30, 2002; and it is

FURTHER ORDERED that any individual company addressed in this Order that fails to file its annual return for the year 2000 by September 30, 2002 shall be deemed to have unreasonably refused or neglected to file its annual statement of intrastate revenues for the year 2000, pursuant to G.L. c. 166, § 12; and it is

FURTHER ORDERED that public access line service be removed from the payphones of any individual company addressed in this order that fails to file its annual return for the year 2000 by September 30, 2002; and it is

FURTHER ORDERED that Brighton Billiards, file its annual return for the year 2000 no later than September 30, 2002 in D.T.E. 02-13-32; and it is

FURTHER ORDERED that DCA Telecom file its annual return for the year 2000 no later than September 30, 2002 in D.T.E. 02-13-34; and it is

FURTHER ORDERED that Matchless Communications, Inc. file its annual return for the year 2000 no later than September 30, 2002 in D.T.E. 02-13-35; and it is

FURTHER ORDERED that Robert A. LaPointe d/b/a Tele-Point Communication file its annual return for the year 2000 no later than September 30, 2002 in D.T.E. 02-13-36; and it is

FURTHER ORDERED that Shepel Management Co., Inc. file its annual return for the year 2000 no later than September 30, 2002 in D.T.E. 02-13-38; and it is

FURTHER ORDERED that Standard Taxi file its annual return for the year 2000 no later than September 30, 2002 in D.T.E. 02-13-39; and it is

FURTHER ORDERED that Strat-o-matic Vending, Inc. file its annual return for the year 2000 no later than September 30, 2002 in D.T.E. 02-13-40; and it is

FURTHER ORDERED that Teletech, Inc. file its annual return for the year 2000 no later than September 30, 2002 in D.T.E. 02-13-41; and it is

FURTHER ORDERED that Terrasi & Son, Inc. file its annual return for the year 2000 no later than September 30, 2002 in D.T.E. 02-13-42; and it is

FURTHER ORDERED that TLC Payphone Communications file its annual return for the year 2000 no later than September 30, 2002 in D.T.E. 02-13-43; and it is

FURTHER ORDERED that the findings of fact and directives herein relative to any payphone company that fails to file its annual return for the year 2000 by September 30, 2002 shall be presented to the Attorney General of the Commonwealth of Massachusetts, pursuant to G.L. c. 159, § 39.

By Order of the Department,

_____/s_____
Paul B. Vasington, Chairman

_____/s_____
James Connelly, Commissioner

_____/s_____
W. Robert Keating, Commissioner

_____/s_____
Eugene J. Sullivan, Jr., Commissioner

_____/s_____
Deirdre K. Manning, Commissioner

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).